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Supreme Court, U.S.
FILED
JAN 7 - 2011
OFFICE OF THE CLERK

No. 101392

IN THE
Supreme Court of the United States

JANICE HAAGENSEN
Petitioner

v.

SUPREME COURT OF PENNSYLVANIA, Et Al
Respondents

On Petition for a Writ of Certiorari to the
United States Court of Appeals for the Third Circuit

PETITION FOR WRIT OF CERTIORARI

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JANUARY 7, 2011

QUESTIONS PRESENTED

I. Whether the Third Circuit Court of Appeals erred in affirming the district court when it refused to find merit in Plaintiff's jurisdictional objections to state court judges' unconstitutional exercise of state power obstructing the scope and objectives of federal law and policy governing federal appellate rights, in violation of the Supremacy Clause of the United States Constitution?

A. Did the Third Circuit err because it affirmed a District Court's rejection of plaintiff's argument in her complaint that the State Supreme Court of Pennsylvania violated the Supremacy Clause of the U.S. Constitution and her First Amendment rights when it *sua sponte* and independently held in an original action that she as a federal lawyer was guilty of obstruction of justice and could be suspended from the practice of law on the ground that she had submitted petitions for certiorari to the U.S. Supreme Court?

B. Did the Third Circuit err because it affirmed a District Court's rejection of plaintiff's claim that the State Supreme Court of Pennsylvania violated the Supremacy Clause of the United States Constitution and her First Amendment rights when it independently found the plaintiff guilty of obstruction of justice on grounds that she filed interlocutory and end-of-case appeals of federal district court

orders, including a statutory appeal of a district court FOIA determination?

C. Did the Third Circuit err because it affirmed a district court dismissal of plaintiff's argument in her complaint that the State Supreme Court of Pennsylvania violated the Supremacy Clause of the United States Constitution because it in an original action and *sua sponte* found the plaintiff guilty of obstruction of justice on grounds that she filed an interlocutory federal appeal and prevailed in a federal forum wherein she reversed a district court judge's orders?

II. Whether the Third Circuit erred because in its opinion dealing with the merits of plaintiff/appellant's challenge to the district court's orders it went outside of the record and considered the ultimate merits of motions written after the brief was submitted (asserting a right to oral argument and recusal), considered the ultimate merits of a petition for rehearing written in a previous and totally different case, and considered the ultimate merits of the pleadings filed in another separate and previously adjudicated federal case?

III.Whether the Third Circuit Court of Appeals erred because it affirmed the district court in its denial of Plaintiff/Petitioner's right to amend the Complaint after granting the motion to dismiss and before any Defendant filed a responsive pleading, and in so doing violated Rule 15(a)(1) of the Federal Rules of Civil Procedure?

PARTIES TO THE PROCEEDINGS

Petitioner is Janice S. Haagensen, who was Appellant, *pro se*, in the Third Circuit Court of Appeals.

Respondents to this action are:

SUPREME COURT OF PENNSYLVANIA and the following members of the Court, individually and in official capacities; Hon. RONALD D. CASTILLE, Chief Justice; Hon. THOMAS G. SAYLOR, Justice; Hon. J. MICHAEL EAKIN, Justice; Hon. MAX BAER, Justice; Hon. DEBRA TODD, Justice; Hon. SEAMUS P. MCCAFFERY, Justice; and Hon. JANE CUTLER GREENSPAN, Justice; DISCIPLINARY BOARD OF THE SUPREME COURT OF PENNSYLVANIA and the following personnel of the Disciplinary Board, individually and in official capacities; MATTHEW F. BURGER, Panel Chairman; LEONARD J. MARSICO, Panel Member; PHILIP B. HART, JR., Panel Member; PAUL J. KILLION, Chief Disciplinary Counsel; PAUL J. BURGOYNE, Deputy Chief Disciplinary Counsel; SAMUEL F. NAPOLI, Disciplinary Counsel and ELAINE BIXLER, Secretary.

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PETITION FOR WRIT OF CERTIORARI

Petitioners through counsel respectfully ask that a Writ of Certiorari issue to review the judgment and opinion of the U.S. Court of Appeals for the Third Circuit entered on August 11, 2010.

OPINIONS BELOW

The judgment and opinion of the panel for the Third Circuit U.S. Court of Appeals was entered August 11, 2010, as an unreported decision and is set forth in the Appendix (App. 4-17). The memorandum order of the U.S. District Court was entered March 27, 2009; it is also unreported and is set forth in the Appendix (App. at 1-3). The Third Circuit's order denying the Petition for Rehearing was entered on October 13, 2010 (App. at 18-19).

JURISDICTION

The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1). The order of the United States Court of Appeals for the Third Circuit affirming the District Court's order of March 27, 2009 (summary dismissal of all Plaintiffs' claims) was issued on August 11, 2010 (App. 10). The Court of Appeals denied Petitioners' Petition for Rehearing on October 13, 2010. The certified copy of the judgment was issued on October 21, 2010, 2(App. *), in lieu of a formal mandate.

The questions presented did not arise until

Petitioner received the Third Circuit Court of Appeals' opinion and judgment affirming the District Court's order of March 27, 2009, which dismissed all claims in Plaintiffs' Complaint.

The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1). The jurisdiction of the United States District Court for the Western District of Pennsylvania was invoked pursuant to 28 U.S.C. §§ 1331 and 42 USC &1983.

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

Article VI, Clause 2:
The Constitution and the laws of the United States which shall be made in pursuance thereof; and of all treaties made, or which shall be made, under the authority of the United states, shall be the supreme law of the land; and the judges in every state shall be bound thereby, anything in the constitution or laws of any state to the contrary notwithstanding.

U.S. CONST. amend. I:
Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press, or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

U.S. CONST. amend. IV:
The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause,

supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

U.S. CONST. amend. V, in pertinent part:
No person shall be . . . deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

U.S. CONST. amend. XIV § 1, in pertinent part:
[N]or shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

42 U.S.C. § 1983, in pertinent part:
Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State . . . subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress.

STATEMENT OF THE CASE

Plaintiff's Complaint at No. 08-1560 was filed on June 26, 2008 in the United States District Court for the Western District of Pennsylvania. Plaintiff stated therein that she was raising objections to the exercise of jurisdiction and the power of judgment by a state court in conflict with sovereign federal law.

Plaintiff asserted that under the Supremacy Clause of the United States Constitution, the Pennsylvania Supreme Court and its Disciplinary Board had no power or original jurisdiction to punish the Plaintiff for her statutorily protected conduct in a federal court.

The Pa. Supreme Court and the Disciplinary Board Defendants filed a Motion to Dismiss the complaint; Plaintiff filed a response. The Magistrate Judge issued his Report and Recommendations, and therein dismissed the Plaintiff's complaint in its entirety. Plaintiff filed Objections to the Report and Recommendations of the Magistrate on February 7, 2009. On March 3, 2009, the presiding judge, U.S. District Judge Terrence F. McVerry, issued an order that all of Plaintiff's objections to the Report lacked merit and that Defendants' motion to dismiss the complaint was granted. Plaintiff then filed an Amended Complaint, and a Notice of Appeal from this Order on March 23, 2009. Judge McVerry amended the order of March 3d on March 27, 2009, to clarify that dismissal of the complaint was with prejudice. It was further ordered that the Amended Complaint and Motion for Temporary Restraining Order were "Dismissed with Prejudice as moot." Plaintiff filed a Motion for Reconsideration of the Orders of March 3 and March 27, 2009, under FRCP 59(e) on April 9, 2009, on grounds that she had a right to amend her complaint, and on grounds that a state court's judges lacked both original and appellate jurisdiction to assess the merits of a civil adversary proceeding in a federal forum. This motion for reconsideration has not been dealt with by the district court judge as of this date, and it is a

pleading which even now remains undecided and outstanding.

Plaintiff-Appellant Haagensen was the attorney of record in federal district court in *Grine v. Coombs*, 214 F.R.D. 312 (W.D.Pa. May 5, 2003), in which she took several appeals to the Third Circuit Court of Appeals, in addition to filing petitions for certiorari with the U.S. Supreme Court. She filed the *Grine* complaint on December 21, 1995; and an amended complaint on April 2, 1996. Suit was brought under various federal environmental statutes, and Grine also brought suit against the U.S. EPA and its Region III Director under the Freedom of Information Act. *See* Appellant Haagensen's Complaint ¶ 16 (App2. at A26-50).

The Third Circuit Court of Appeals affirmed the judgment of the District Court, dismissing all claims against the federal defendants for lack of Article III jurisdiction, on May 28, 2004. The district court did not reach the merits of plaintiffs' claims against the federal defendants because it dismissed all claims against them on jurisdictional grounds without prejudice.

Plaintiff was never accused, tried or found guilty in any federal court of any alleged violation of the Pennsylvania Rules of Professional Conduct, as arising from her litigation activities in a federal forum, including her activities in the Third Circuit Court of Appeals and in the United States Supreme Court.

On November 10, 2005, the Pennsylvania Office of Disciplinary Counsel without a complaint, and *on its own motion*, initiated a disciplinary proceeding on grounds that "Respondent" Haagensen had used the federal appellate process to seek review of district court orders and therefore was guilty of obstruction of justice and lack of legal seriousness, or "frivolity." Plaintiff was served with a petition for discipline filed on November 15, 2006, (Appx at 20-27) which again alleged that Plaintiff's pursuit of appeals from district court orders to the Third Circuit Court of Appeals constituted obstruction of justice and provided evidence of her guilt of "frivolity." The Board rested its Petition for Discipline on Atty. Haagensen's "disrespecting" the district judge's orders by virtue of her use of the federal appellate system of review, and explicitly accused her of obstruction of justice because she filed Petitions for Certiorari with the United States Supreme Court. *See* Petition for Discipline (Appx. at 24).

On September 25, 2008, the Pennsylvania Supreme Court issued an order for imposition of private reprimand pursuant to the Pennsylvania rules of disciplinary enforcement. Atty. Haagensen petitioned the Pennsylvania Supreme Court on jurisdictional grounds for *de novo* review of the Disciplinary Board's judgment. The Pa. Supreme Court's ultimate *de novo* disposition of the Petition was summary, and no hearing was afforded to Atty. Haagensen.

During the pendency of this federal case, the Disciplinary Board of the Supreme Court of Pennsylvania, on May 4, 2009, issued a rule to show

cause why Atty. Haagensen should not be subjected to public censure and the imposition of costs. Ms. Haagensen answered the rule to show cause on June 5 for the purpose of announcing to the Board its complete and fatal lack of jurisdiction over her original and appellate rights in a federal system

No sworn complaint, no witnesses and no testimony given under oath was ever presented by the Board during the Disciplinary Board's entire prosecution of its petition for discipline against Atty Haagensen. The Board prosecuted her on evidence which she had never seen, because part of the record in the *Grine* case had been summarily sealed by the district court judge without hearing or notice, after the *Grine* case was concluded and before the Board initiated any proceedings against Atty Haagensen.

The Third Circuit Court of Appeals, prior to Pennsylvania's initiation without a complaint of disciplinary proceedings, as a matter of record never imposed or sought to impose original disciplinary sanctions of any description on the Petitioner. The U.S. District Court for the Western District of Pennsylvania , prior to the Supreme Court of Pennsylvania's initiation of disciplinary proceedings, as a matter of record never imposed or sought to impose original disciplinary sanctions on the Petitioner. The United States Supreme Court has never, to this day, sought to discipline the Petitioner on the grounds that her submissions were in any way improper, incendiary, frivolous or threatening to the ordinary administration of justice.

The U.S. District Court for the Western District of Pennsylvania issued a rule to show cause

why it should not impose "reciprocal" discipline on Petitioner, and after she responded to the rule, without affording her a hearing, imposed a suspension from practice allegedly based on the State Supreme Court of Pennsylvania's verdict of guilt, i.e., condemnation without hearing, on grounds of obstruction of justice by virtue of her exercise in the federal appellate system of her client's right of access to the courts. The U.S. District Court for the Eastern District of Pennsylvania followed suit, and suspended the Petitioner from practice by imposition of "reciprocal" discipline.

The Third Circuit Court of Appeals initially issued an order stating that Petitioner was not suspended from practice in its jurisdiction merely because a state court order asserting her alleged guilt of obstruction of justice was in existence. However the Third Circuit eventually issued a rule to show cause at No.10-8013 why "reciprocal" discipline should not be imposed, and set hearing for January 10, 2011, in Philadelphia, one day before the deadline ran on this Petition for Certiorari.

The merits panel hearing the appeal from *Haagensen v. State Supreme Court of PA* in its appellate opinion ostensibly dealing with the merits of Petitioner's challenge to the orders of the trial court accused her of misconduct based on the existence of pleadings and cases which lay far outside the record. The Third Circuit at No.10-8046 instituted a rule to show cause why she should not be subject to imposition of discipline based on accusations made within the appellate opinion at No.09-1957. The Third Circuit then through clerk order consolidated the actions at No.10-8013 and

No.10-8046, over the strenuous objections of Petitioner. As of this date, hearing as to a reciprocity proceeding and an original proceeding (though derived from *Haagensen* v. *State Supreme Court of PA*) has been "consolidated" by clerk order and is scheduled for January 10, 2011.

REASONS FOR GRANTING THE PETITION

I. The U.S. Supreme Court should exercise its powers of oversight to immediately impress on the Third Circuit Court of Appeals the wrongness and unconstitutional nature of its affirmance of a district court decision failing to recognize the paramount and supreme status of federal law and failing to recognize that not only c*onflict* but *war* between the Union and the States has been declared when the Third Circuit ignores its sworn duty to uphold the laws of the United States and instead conveys its blessing on the State Supreme Court of Pennsylvania's stunning and secessionist conclusion that a federal lawyer is guilty of obstruction of justice because she filed a petition for certiorari from a Third Circuit judgment to the U.S. Supreme Court.

Any attempt by members of the state judiciary to initiate an independent disciplinary proceeding *de novo* against a Pennsylvania lawyer practicing in an Article III court is barred both by the Fourteenth Amendment and by the Supremacy Clause of the U.S. Constitution. State rules regulating attorney conduct are subject to operation of the Supremacy

Clause. See, e.g., *Hines v, Davidowitz*, 312 U.S. 52 (1941); *Supreme Court of Virginia v. Friedman*, 487 U.S. 59 (1988).

The Third Circuit Court of Appeals in its holding has departed from the accepted course of judicial procedure and has failed to revise or reconsider its judgment carried out in complete reliance on a discarded and blatantly secessionist doctrine which holds that state law is paramount and supreme to federal law. The Circuit Court's apparent refusal to adhere to preemption doctrine as it is now established by the U.S. Supreme Court is a failing which creates an important question of law that will have to be settled by the U.S. Supreme Court.

The Disciplinary Board of the State Supreme Court of Pennsylvania included the following accusation in its Petition for Discipline at Par.7 (Appx at 22-23): "...Respondent sought certiorari to the Supreme Court of the United States,..." No judge sitting on the Third Circuit Court of Appeals, or sitting in the Western District of Pennsylvania, the Eastern District of Pennsylvania, or in the vicinity of the State Supreme Court of Pennsylvania is vested with jurisdiction to rule on the merits of a petition for certiorari which has been submitted to the U.S. Supreme Court. No state court judge can on his own initiative (or even with help) make the determination that submission of a petition for certiorari to the U.S. Supreme Court constitutes proof of a federal lawyer's OBSTRUCTION OF JUSTICE.

The Pennsylvania Constitution and the statutory authority derived from it describes affirmatively the jurisdiction of Pennsylvania's courts. Appellate

power over the federal courts is not comprehended within it. See Supremacy Clause of U.S. Constitution; see Pennsylvania Constitution.

The State Supreme Court of Pennsylvania's Disciplinary Boa most definitely lacks jurisdiction to independently and de novo find a federal lawyer guilty of obstruction of justice because she submitted a petition for certiorari to the U.S. Supreme Court: "...[T]his Court has rigorously insisted that [a] denial carries with it no implication whatever regarding the Court's view on the merits of cases which it has declined to review. The Court has said this again and again; again and again it has to be repeated." *Maryland v. Baltimore Radio Show*, 338 U.S. 9123,____(1950)..

The jurisdiction of this Court is invoked pursuant to 28 U.S.C. 1254(1). State law cannot be substituted for the laws of the United States so as to give a state court the power to punish, suspend or disbar a federal lawyer because he or she challenged a circuit court judgment by virtue of the submission of a petition for certiorari to the U.S. Supreme Court. State court judges are not Article III judges, nor are they Supreme Court justices. Only Supreme Court Justices are vested with jurisdiction to review the merits of a petition for certiorari, or decline to review a petition. No federal law or statute has rendered criminal the mere filing of a petition for certiorari whose review is declined by the Justices of the U.S. Supreme Court.

The Supreme Court's decision not to consider a petition for certiorari can hardly be characterized, by even the wildest of judges or advocates, as proof of a

petitioner's wilful obstruction of justice. Appellant has sufficiently pled in her complaint that the Disciplinary Board, in expressing its belief that it possesses subject-matter jurisdiction to assess the merits of a petition for certiorari filed with the United States Supreme Court, has most definitely violated the Supremacy Clause of the United States Constitution, and has deliberately abused its very limited powers so as to retaliate against the Plaintiff for the exercise of her clients' First Amendment right of access to the courts: "[T]he Courts of the United States are bound to proceed to judgment and to afford redress to suitors before them in every case to which their jurisdiction extends. They cannot abdicate their authority or duty in any case in favor of another jurisdiction." *Chicot County v. Sherwood, 148 U.S. 529,____(1893).*

II. The Third Circuit grievously erred when it affirmed the district court in holding that the Supremacy Clause was not violated and state law was not held paramount and supreme to federal law when a federal lawyer was found guilty of obstruction of justice by the State Supreme Court of Pennsylvania because she prevailed when she perfected an interlocutory appeal and reversed a district court order dismissing her federal claims with prejudice.

The Pa. Disciplinary Board in its original Petition for Discipline of November 15, 2009, stated that by Plaintiff's conduct, as alleged in its Petition at Plaintiff violated the rule (Rule 3.1) that a lawyer who brings a proceeding and controverts issues therein when there is no basis in law or fact for doing so, is guilty of "frivolity," and the Board also charged

that Plaintiff had engaged in conduct "prejudicial to the administration of justice." (Rule 8.4(d)) Petition for Discipline (App. at 26-27).The Disciplinary Board specifically found Atty. Haagensen guilty of violation of these rules because she prevailed on appeal, and ***the appeal reversed an order written by the district court judge***:

> One of [Haagensen's] appeals to the Third Circuit, filed at C.A. 98-3494, was denied in part for lack of jurisdiction, and ***in part modified*** the district Court's dismissal of aspects of the matter "with prejudice' to dismissal of those aspects "without prejudice."

Petition for Discipline (App. at 22) (emphasis added). To the contrary, the Third Circuit Court of Appeals ***vacated*** and ***reversed*** the district court, and remanded to that court with instructions for it to proceed in future in compliance with the Court's directives. The Disciplinary Board has attempted to resurrect a vacated and overruled order from a trial court judge, and to retaliate against Atty. Haagensen because she challenged the order and ***succeeded in having it vacated and reversed***. This is an attack on her First Amendment right of access to the courts and places state law in direct conflict with federal law in violation of the Supremacy Clause of the United States Constitution. State court judges are not federal appellate officers with power to decide the merits of an appeal; nor are they judicial officers with the power to alter or review a federal appellate court's decisions after they have been concluded and the mandate of the appellate court has been entered on the record. Neither a state court disciplinary

board nor the lower court judge whose order was reversed and vacated is vested with power to alter the law of the case as determined by a federal appellate court.

There is no federal law making it a crime for a federal lawyer practicing in an Article III court to prevail on appeal. The Petition for Discipline filed by the Disciplinary Board of the State Supreme Court of Pennsylvania criminalized the filing of a successful interlocutory appeal through reliance on state law, and thus placed state law in direct conflict with federal law.

III.The Third Circuit grievously erred when it affirmed the district court holding that the State Supreme Court of Pennsylvania did not violate the Supremacy Clause of the U.S. Constitution when it found a federal lawyer guilty of frivolity and obstruction of justice because she took forward a statutory appeal of a FOIA determination by a district court judge *from* the district court *to* the Third Circuit Court of Appeals.

"Article VI of the Constitution makes the Constitution the 'Supreme Law of the Land.' In 1803, Chief Justice Marshall, speaking for a unanimous Court, referring to the Constitution as 'the fundamental and paramount law of the nation,' declared in the notable case of *Marbury* that 'It is emphatically the province and duty of the judicial department to say what the law is.' This decision declared the basic principle that the federal judiciary is supreme in the exposition of the law of the Constitution, and that principle has ever since been respected by this Court and the Country as a

permanent and indispensable feature of our constitutional system." *Cooper v. Aaron*, 358 U.S. 1, 18 (1958).

The states have no power to impede, burden or in any manner to control or remove to their own jurisdiction the operations of the laws of the United States as enacted by Congress to carry into execution the powers vested in the federal courts. *See Marbury*, *McCulloch*, and the Supremacy Clause, U.S. Const., Art. VI, Cl. 2.

Under the Supremacy Clause, when state law conflicts or is incompatible with federal law, the state law is pre-empted by federal law. Pre-emption occurs when congress explicitly or implicitly states its intent to regulate a specific area at the exclusion of the states. Pre-emption also occurs when the state regulation actually conflicts or is incompatible with federal law. *Fidelity Savings & Loan Ass'n v. De La Cuesta*, 485 U.S. 141 (1982); *Sperry v. Florida*, 373 U.S. 379 (1963). The Supreme Court has made clear that these principles apply even when the area being regulated by federal law is one of special concern to the state. *See Sperry*.

Pennsylvania has an interest in regulating the conduct of attorneys licensed to practice in the state. But the law of the state, though enacted in the exercise of powers not controverted, must yield when incompatible with federal legislation. *See Baylson v. Disciplinary Board*, 975 F.2d 102 (1992). Regulation of the legal profession admittedly implicates significant state interests, ***but the federal interest in protecting federal officials in the performance of***

their federal duties is paramount. *See* Supremacy Clause.

As Chief Justice Marshall of the U.S. Supreme Court observed in 1821, state court judges have their hands full in the state courts, where, as he said, they are more likely mule-trading than dispensing anything, including justice, for free:

> In many States, the judges are dependent for office and salary on the will of the legislature. When we observe the importance which the Constitution attaches to the independence of judges, we are the less inclined to suppose that it can have intended to leave these constitutional questions to tribunals where this independence may not exist, in all cases where a State shall prosecute an individual who claims the protection of an Act of Congress.

Cohens v. Virginia, at 386-387.

A state court lacks jurisdiction to independently sanction a lawyer and find said lawyer guilty of violation of Professional Rule of Conduct 8.4(d), based on the lawyer's exercise of her statutory right to undertake a FOIA inquiry in a federal forum, in a search for documents in the public domain. The FOIA inquiry as initiated and taken forward by Plaintiff was conducted in compliance with the specific statutory provisions of FOIA, and the integrity of this statutory inquiry cannot be independently assessed or assessed do novo by a state court's disciplinary board, which lacks subject-matter jurisdiction to determine the integrity of a FOIA proceeding:

Under the Supremacy Clause, state laws that are 'an obstacle to the accomplishment and execution of the full purposes and objectives of Congress' are invalid. *Hines v. Davidowitz*, 312 U.S. 52, 67 (1941). State rules regulating attorney conduct are subject to operation of the Supremacy Clause. See, e.g., *Supreme Court of Virginia v. Friedman*, 487 U.S. 59 (1988) (striking down discriminatory admissions requirements for nonresidents); *Goldfarb v. Virginia State Bar*, 421 U.S. 773 (1975) (invalidating minimum fee schedules); *Sperry v. Florida*, 373 U.S. 379 (1963). Thus, to the extent the enforcement of a state ethics rule might frustrate congressional ends, the Supremacy Clause would be a bar to any such enforcement.

County of Suffolk v. Long Island Lighting Co., 710 F.Supp. 1407, 1414-15 (E.D.N.Y. 1989) (West citations omitted.)

Not one word in the body and text of FOIA as enacted by Congress gives an individual state the power to sanction a federal lawyer or find her guilty of obstruction of justice because she perfects a statutory appeal of a FOIA determination, put on the record by a district court judge, from the trial court to a circuit court. See 5USC &552(a)(4)(B).

The Third Circuit has stated that "Generally we apply a two-tier test when reviewing [a District Court] Order granting summary judgment in proceedings seeking disclosure under the FOIA. See *Sheet Metal Workers Int'l Assoc. Local UnionNo. 19*

v. U.S. Dept. of Veterans Affairs, 135 F3d 891,___ (3rd Cir. 1998).

It is a matter of record that the Third Circuit in the Grine case deliberately ignored its statutory duty of review as mandated by FOIA and its own precedent and remained silent (as the grave) instead of conducting any review whatsoever of the district court's decisions to withhold documents in the possession of the U.S. EPA.

Federal law absolutely prohibits punishment (i.e.,harassment, trashing and/or ruination) of a federal lawyer by an individual state for the sin of filing a statutory appeal of a FOIA decision made by a district court judge: "[T]he basic purpose of FOIA is to ensure an informed citizenry vital to the functioning of a democratic society, needed to check against corruption and to hold the government accountable to the governed." *NLRB v. Robbins Tire & Rubber Co.*, 437 U.S. 214,___(1978).

As to FOIA disclosures; the *Grine* district court judge's validation of his own decisions is not dispositive. Exclusive jurisdiction is vested in the circuit court to review a district court judge's findings as to exemption of materials in the possession of government agencies; i.e., in the public domain. The Court of Appeals ***must*** apply a two-step statutory standard of review to FOIA cases; the appellate court ***must*** determine whether the district court had an adequate factual basis on which to make its decision and ***must review for clear error*** the district court's findings that documents at issue are exempt from disclosure. *See Church of Scientology v. U.S. Dept. of Army*, 611 F2d 738 (9th Cir. 1979).

State law is in full-blown and deadly conflict (or in hand-to-hand combat) with f*edera*l law whenever a state court judiciary obstructs and hinders the policies and objectives of an Act of Congress, such as the Freedom of Information Act. Petitioner exercised as counsel for a federal requestor a statutorily guaranteed right to review of a single judge's decisions as to withholding of documents ostensibly in the public domain. The mere filing of an appeal did not make her, pursuant to any provision of f*edera*l law, a criminal or a lawyer who should be suspended from practice.

Plaintiff has sufficiently pled in her complaint that as an officer of a federal court who has made the decision to perfect an appeal she is within the dominion and exclusive jurisdiction of the government of the United States, and no process issued under state authority can pass over the line of division between the two sovereignties.

Under the Supremacy Clause, when state law conflicts or is incompatible with federal law, the state law is pre-empted by federal law. Pre-emption occurs when congress explicitly or implicitly states its intent to regulate a specific area at the exclusion of the states. Pre-emption also occurs when the state regulation actually conflicts or is incompatible with federal law. *Fidelity Savings & Loan Ass'n v. De La Cuesta*, 485 U.S. 141 (1982); *Sperry v. Florida*, 373 U.S. 379 (1963). The Supreme Court has made clear that these principles apply even when the area being regulated by federal law is one of special concern to the state. Under the Supremacy Clause, when state law conflicts or is incompatible with federal law, the state law is pre-empted by federal law. Pre-emption

occurs when congress explicitly or implicitly states its intent to regulate a specific area at the exclusion of the states. Pre-emption also occurs when the state regulation actually conflicts or is incompatible with federal law. *Fidelity Savings & Sperry*. The Supreme Court has made clear that these principles apply even when the area being regulated by federal law is one of special concern to the state.

Pre-emption doctrine in this context means that the state of Pennsylvania is excluded from subversion of, and serious interference with, the integrity of a FOIA inquiry, and it is likewise precluded from any meddling with a FOIA case's appellate disposition in a federal forum. Pennsylvania's attempt to sanction a federal lawyer on grounds that she exercised her federal appellate prerogatives in pursuing a FOIA inquiry is grossly violative of the Supremacy Clause of the U.S. Constitution.

The *pro se* Plaintiff was not required to anticipate the state actors' defense of sovereign immunity in her Complaint, nor did the District Court or the Third Circuit have any right to evaluate the worth of the state actors' anticipated defense in assessing the sufficiency of plaintiffs' claims at the pleading stage of these proceedings.

In assessing the sufficiency of threshold pleading, the court cannot burden the *pro se* plaintiffs with the job of anticipating an affirmative defense. To do so is to impose a heightened pleading standard on the plaintiffs. This is a practice strictly forbidden by U.S. Supreme Court authority on this subject. See *Swierkiewicz v. Sorema N.A.*, 534 U.S. 506 (2002);

Steel Co. v. Citizens for a Better Environment, 523 U.S. 83 (1998); *Kulick v. Pocono Downs Racing Ass'n, Inc.*, 816 F.2d 895 (3rd Cir. 1987). These decisions have been accorded finality, and such precedent cannot be ignored by the Third Circuit.

The federal rules governing pleading do not require the plaintiff to anticipate an immunity defense; nor do the rules require any heightened specificity in pleading. See *Gomez v. Toledo*, 446 U.S. 635 (1980); *Leatherman v. Tarrant County Narcotics Intelligence and Coordination Unit*, 507 U.S. 163 (1993).

At the pleading stage, general factual allegations of injury resulting from defendants' conduct are sufficient, because on a motion to dismiss the Court must presume that general allegations embrace those specific facts that are necessary to support the plaintiffs' claims. See *Lujan v. National Wildlife Federation*, 497 U.S. 871 (1990); *Lujan v. Defenders of Wildlife*, 504 U.S. 555 (1992).

IV. The Court of Appeals erred and failed to afford the Petitioner/Appellant due process of law because in taking up the merits of the Petitioner's appeal and in affirming the district court it considered, without apology or restraint, materials which lay far outside of the record.

The Third Circuit Court of Appeals has opined on numerous occasions that it cannot consider material on appeal that is outside of the district court record and at the same time afford due process to a litigant. The only proper function of a court of appeals is to review the decision below on the basis of the record

that was before the district court. See *Bass v. Attardi*, 868 F2d 45 (3rd Cir. 1989); *Fassett v. Delta Rappa Epsilon*, 807 F2d 1150 (3rd Cir. 1986); *Landy v. Fed.Deposit Ins. Corp.*, 406 F2d 139 (3rd Cir. 1973).

The Third Circuit based its review of Petitioner's appellate brief on materials that were never part of the record which lay before the district court. The appellate court had no right to base their decision on material which never came before the trial court, or to condemn the Petitioner when she had no chance to defend herself against accusations arising out of materials never included in the record. The appellate court apparently sought to review In re Janice Haagensen, No.10-8013, a case pending before the Third Circuit, which has yet to be decided, a petition for rehearing filed in a totally separate appeal, *Grine v. Colburn's Air Conditioning and Refrigeration, et al.*, at No.09-3775, a motion to restore her right to present oral argument before the Third Circuit and a motion for recusal filed after the appellate brief at No.09-1957 was timely submitted. None of this material is part of the record at No.08-01560, *Haagensen v. State Supreme Court of Pennsylvania*, as compiled in the district court. This is an example of a merits panel's going off the reservation with a vengeance. It is unfair, abusive, and should not be tolerated by any court sworn to uphold the Due Process Clause of the Constitution of the United States. The Third Circuit in endorsing this approach is in conflict not only with other circuits and with the U.S. Supreme Court; it is in conflict with itself.

V. The trial court judge erred because he denied Plaintiff-Appellant Haagensen the right to file an

amended complaint after granting the motion to dismiss and before any Defendant had filed a responsive pleading. In so doing the trial court judge violated Rule 15(a)(1) of the Federal Rules of Civil Procedure; the Third Circuit disregarded existing precedent in affirming the trial court.

Plaintiff Haagensen has the right to amend her complaint once without leave of court or consent of opposing parties, before any responsive pleading has been filed pursuant to the clear mandate of Fed. Rule Civ. Proc. 15(a)(1). The lower court erred in stating in its Order of March 27, 2009, that Haagensen, given the status of the action before the Court, must obtain the opposing parties' consent or leave of Court to amend her Complaint. Pursuant to Rule 15(a)(1), a *complaint* may be *amended once as a matter of course* at any time *before a responsive pleading is served*. A Rule 12(b)(6) motion to dismiss *is not a responsive pleading* within the meaning of Rule 15 (a). Plaintiff should have been allowed to amend her complaint as of right without leave of court or opposing parties' consent under Rule 15(a)(1). *Shane v. Fauver*, 213 F.3d 113 (3d Cir. 2000):

> Thus, *in the typical case* in which a defendant asserts the defense of failure to state a claim by motion, the *plaintiff may amend the complaint once "as a matter of course"* without leave of court. See 2 James Wm. Moore et al., Moore's Federal Practice &12.34[5], at 12-76 (3d ed. 1999) (quoting Fed.R.Civ.P. 15(a)).

Shane, at 115 (emphasis added). In *Shane*, the Third Circuit also held that district court judges should

expressly state that the plaintiff has leave to amend within a specified period of time. *Accord Borelli v. City of Reading*, 532 F.2d 950 (3d Cir. 1976). *And see* Third Circuit command: "We have instructed that if a complaint is vulnerable to 12(b)(6) dismissal, a district court must permit a curative amendment, unless an amendment would be inequitable or futile." *Phillips v. County of Allegheny*, 515 F.3d 224 (3d Cir. 2008), citing *Shane* and *Grayson v. Mayview State Hospital*, 293 F.3d 103, 108 (3d Cir. 2002).

In the instant case, the district court's orders do not assert that Plaintiff has run out of time to file a timely amended pleading. An order dismissing a complaint without prejudice is not a final and appealable order, unless the plaintiff no longer can amend the complaint because the statute of limitations has run or the plaintiff has elected to stand on the complaint. *See Morton International,. Inc. v. A.E. Stanley Manufacturing Ca*, 343 F.3d 669 (3rd Cir. 2006); *Zaidi v. Ehrlich*, 732 F2.d 1218 (5th Cir. 1984); *Smith v. Blackledge*, 451 F.2d 1201 (4th Cir. 1971). An order of dismissal without prejudice is not a final, appealable order unless and until the party seeking relief disavows any intention to reinstate the litigation. *Tiernan v. Dovoe*, 923 F.2d 1024 (3d Cir. 1991).

Neither "***case as CLOSED***" nor "***DISMISSED WITH PREJUDICE***" appears on the face of the Court's Order of March 3, 2009. The clerk's adding the words "case closed" on a docket sheet is not dispositive that the order is final. *Morton* at 481, and continuing:

> We also draw on our own experience in recognizing that a district court does not

> render a matter final for purposes of appeal merely by marking the docket in the case with the notation "case closed." In fact, our experience teaches us that sometimes a district court will mark a case closed when it could not possibly be final for purposes of appeal.

Morton explains that a docket entry marking the case closed is not the equivalent of notice to a plaintiff that a case is being "dismissed with prejudice" when that phrase does ***not appear on the face of the order itself***.

CONCLUSION

The Petition for a Writ of Certiorari should be granted.

Respectfully submitted,

JANICE HAAGENSEN

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ENON VALLEY, PA 16120
TEL 724 336-5962
JANHAAGENSEN@AOL.COM

Date: January 7, 2011

APPENDIX

APPENDIX 1-2

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF
PENNSYLVANIA

No. 2:08 – cv - 1560

JANICE HAAGENSEN

Plaintiff,

v.

SUPREME COURT OF PENNSYLVANIA and the following members of the Court, individually and in official capacities, Hon. RONALD D. CASTILLE, Chief Justice, Hon. THOMAS G. SAYLOR Justice, Hon J. MICHAEL EAKIN, Hon. MAX BAER, Justice, Hon. DEBRA TODD, Justice, Hon. SEAMUS P. MCCAFFERY, Justice, and Hon. JANE CUTLER GREENSPAN, Justice, DISCIPLINARY BOARD OF THE SUPREME COURT OF PENNSYLVANIA and the following personnel of the Disciplinary Board, individually and in official capacities; MATTHEW F. BURGER, Panel Chairman, LEONARD J. MARSICO, Panel Member, PHILIP B. HART, JR., Panel Member, PAUL J. KILLION, Chief Disciplinary Counsel, PAUL J. BURGOYNE, Deputy Chief Disciplinary Counsel, SAMUEL F. NAPOLI, Disciplinary Counsel, and ELAINE BIXLER, Secretary,

Defendants.

ORDER OF COURT

AND NOW, this 27th day of March, 2009, after an Order of Court dated March 3, 2009 (Document No. 16) was entered which granted a Motion to

Dismiss (Document No. 5) filed on behalf of all Defendants, and thereafter Plaintiff, Janice Haagensen, filed a nearly identical Amended Complaint (Document No. 17) and Motion For Emergency Temporary Restraining Order (Document No. 18) on March 23 and 24, 2009 respectively, without having the opposing parties' written consent or leave of Court in violation of Fed.R.Civ.P. 15 (a)(2),

NOW THEREFORE, it is ORDERED, ADJUDGED and DECREED that the Order of March 3, 2009 (Document No. 16) is hereby amended to clarify that the dismissal of this action was WITH PREJUDICE, as evidenced by the directive to the Clerk of Courts to mark the case closed.

It is FURTHER ORDERED that the Amended Complaint (Document No. 17) and Motion For Emergency Temporary Restraining Order (Document Nos. 17 and 18) are DISMISSED WITH PREJUDICE as moot.

BY THE COURT:

s/ Terrence F. McVerry
United Stated District
Court Judge

cc: Janice S. Haagensen
Email: janhaagensen@aol.com

A. Taylor Williams, Esquire
Email: legaldepartment@pacourts.u

Honorable Robert E. Mitchell
United States Magistrate Judge

APPENDIX 3-19
NOT PRECEDENTIAL

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 09-1957

JANICE HAAGENSEN,

Appellant,

v.

SUPREME COURT OF PENNSYLVANIA and the following members of the Court, individually and in official capacities; Hon. RONALD D. CASTILLE, Chief Justice; Hon. THOMAS G. SAYLOR, Justice; Hon. J. MICHAEL EAKIN, Justice; Hon. MAX BAER, Justice; Hon. DEBRA TODD, Justice; Hon. SEAMUS P. MCCAFFERY, Justice; and Hon. JANE CUTLER GREENSPAN, Justice; DISCIPLINARY BOARD OF THE SUPREME COURT OF PENNSYLVANIA and the following personnel of the Disciplinary Board, individually and in official capacities; MATTHEW F. BURGER, Panel Chairman; LEONARD J. MARSICO, Panel Member; PHILIP B. HART, JR., Panel Member; PAUL J. KILLION, Chief Disciplinary Counsel; PAUL J. BURGOYNE, Deputy Chief Disciplinary Counsel; SAMUEL F. NAPOLI, Disciplinary Counsel and ELAINE BIXLER, Secretary

On Appeal from the United States District Court
for the
Western District of Pennsylvania
(D.C. Civ. No. 08-01560)
District Judge: Terrence F. McVerry
Submitted Under Third Circuit L.A.R. 34.1(a)
on May 18, 2010

Before: FUENTES, HARDIMAN, and
NYGAARD, Circuit Judges.
(Opinion Filed: August 11, 2010)

OPINION OF THE COURT

FUENTES, Circuit Judge:

Attorney Janice Haagensen filed suit in federal district court challenging disciplinary action taken against her by the Supreme Court of Pennsylvania. Haagensen's Complaint contested the Pennsylvania Supreme Court's jurisdiction to discipline her for her actions in a federal court. The District Court adopted the Report and Recommendation of a Magistrate Judge, who had found, inter alia, that Plaintiff failed to state a cause of action. Because we find the appeal patently frivolous and agree with the District Court's decision, we affirm the dismissal of Haagensen's claims.

I.

Because we write primarily for the parties, we only discuss the facts and proceedings to the

extent necessary for resolution of this case.[1] On November 15, 2006, the Office of Disciplinary Counsel for the Commonwealth of Pennsylvania filed a Petition for Discipline against Haagensen based on her conduct in *Grine v. Coombs*, 214 F.R.D. 312 (W.D. Pa. 2003), *aff'd*, 98 F. App'x 178 (3d Cir. 2004). According to the disciplinary complaint and our own review of the case, as detailed in *Grine v. Coombs*, 112 F. App'x 830, 832-33 (3d Cir. 2004), Haagensen refused to comply with court orders from both the District Court and this Court during the course of litigation, failed to provide or request discovery, made no response to a motion for summary judgment, filed improper appeals and petitions for certiorari (most of which were denied for lack of jurisdiction), and willfully delayed the case for over eight years. We ordered her to pay appellee's attorney's fees in the amount of $44,936. *Id.* at 834.

The Petition for Discipline alleged that Haagensen had violated Pennsylvania's Rules of Professional Conduct. Following a hearing before the Disciplinary Board and subsequent appeal to the Pennsylvania Supreme Court, a private

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[1] These historical facts are drawn from the Appellant's brief, the District Court's decision in this case, *Haagensen v. Supreme Court of Pennsylvania, et al.*, 651 F.Supp.2d 422 (2009), and the opinion in *In re Discipline of Janice S. Haagensen*, No. 09-mc-310, 2010 WL 887366 (W.D. Pa. Mar. 8, 2010), in which the Western District of Pennsylvania entered a reciprocal order administratively suspending Haagensen from the practice of law before that court.

reprimand was imposed. The Disciplinary Board subsequently recommended public censure. The Pennsylvania Supreme Court rejected this recommendation and entered an order to show cause why Haagensen should not be suspended for one year and one day. Haagensen never responded and on February 17, 2010 the Pennsylvania Supreme Court entered an order suspending Haagensen for that period. Throughout these proceedings, Haagensen contended that the Disciplinary Board and the Supreme Court of Pennsylvania lacked jurisdiction to enforce sanctions based upon her behavior in federal court.

On November 10, 2008, following the Pennsylvania Supreme Court's imposition of a private reprimand, Haagensen filed an action in the Western District of Pennsylvania against the Supreme Court and other named Defendants, in which she raised a "jurisdictional challenge" to the Defendants' actions.[2] Her novel argument essentially boils down to the claim that, by disciplining her for her actions in a federal court, the state disciplinary board violated the Supremacy Clause.[3] On her theory, for which she

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[2] At the time she filed her Complaint, Haagensen had been directed to pay the costs of investigating and prosecuting the disciplinary matter, but had not yet been suspended.

[3] Haagensen deems it sufficient to cite the Supremacy Clause of the United States Constitution, U.S. Const. art. VI, cl. 2, as her sole support for a range of specific propositions. These include "[f]ederal courts are vested with original and appellate jurisdiction over attorney disciplinary proceedings initiated within the exclusive authority of the federal judiciary," (Appellant's Br. at 10),

cites no supporting case law, only the federal courts can punish her for her behavior in a federal court. Haagensen's Complaint includes causes of action alleging violations of (1) her First Amendment rights of access to the courts and free speech, (2) her property interest in employment and her procedural due process rights, (3) her Fourth Amendment right to be free of unreasonable searches and seizures, (4) her right to privacy, and, (5) her right to substantive due process.

The District Court adopted the Report and Recommendation of the Magistrate Judge, who had found that Plaintiff failed to identify a conflict between federal and state regulations, nor had she alleged that the Pennsylvania Supreme Court suspended her from practice in federal court. Accordingly, the court found that Plaintiff failed to state a claim upon which relief could be granted. However, even had a cause of action been pled, the Magistrate Judge concluded that numerous immunity doctrines applied. The Magistrate Judge also cited ample authority for the proposition that a state court can sanction an attorney for conduct in federal court. *See, e.g., Gadda v. Ashcroft*, 377 F.3d 934, 944 (9th Cir. 2004) (rejecting as without merit an attorney's argument that Supreme Court of California

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"the federal interest in protecting federal officials in the performance of their federal duties," (*Id.* at 14), and that "[a] state court most definitely lacks jurisdiction to independently and de novo sanction an attorney for the alleged frivolity of a Petition for Certiorari presented to the United States Supreme Court," (*Id.* at 16).

lacked jurisdiction to disbar him based on conduct in federal courts); *In re Dennis*, 188 P.3d 1, 13-14 (Kan. 2008) (holding that Kansas Supreme Court possessed jurisdiction to discipline attorney for conduct in federal court).

On September 29, 2009, a panel of this Court filed an order granting the Defendants' motion to be excused from filing a brief.[4] Thereafter, we denied Haagensen's motion to stay the Administrative Suspension Order and Rule to Show Cause Order of the Pennsylvania Supreme Court.[5]

II.

In her appeal, Haagensen challenges the District Court's decision and in particular its rejection of her Supremacy Clause argument and her allegation that the Pennsylvania judiciary retaliated against her for exercising her First Amendment rights of appeal in a federal forum. We find Haagensen's contentions to be completely without merit and will affirm for the reasons outlined in the Magistrate Judge's thorough

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[4] In their motion to be excused from filing a brief, the Defendants stated that all claims are barred by doctrines including, inter alia, failure to state a claim, *Rooker-Feldman*, judicial immunity, quasi-judicial immunity, and prosecutorial immunity, the bar on injunctive and declaratory relief for judicial actions, and Eleventh Amendment immunity.

[5] The District Court had subject matter jurisdiction over Haagensen's claims pursuant to 28 U.S.C. § 1331. We have jurisdiction under 28 U.S.C. § 1291.

Report and Recommendation.

Haagensen also claims that the District Court erred by denying her the right to file an amended complaint, pursuant to Federal Rule of Civil Procedure 15(a). Under the version of Rule 15(a) in effect at the time, a party was permitted to amend a pleading once "as a matter of course" prior to service of a responsive pleading. Fed. R. Civ. P. 15(a) (2008) (amended 2009).[6] Although Haagensen is correct that a motion to dismiss is not a responsive pleading for the purposes of Rule 15(a), she fails to recognize that an amendment is allowed only "up to the point at which the district court grants the motion to dismiss and enters final judgment." *Fletcher-Harlee Corp. v. Pote Concrete Contractors, Inc.*, 482 F.3d 247, 252 (3d Cir. 2007); *see also Kauffman v. Moss*, 420 F.2d 1270, 1276 (3d Cir. 1970) ("[S]ince judgment has been entered on the motion to dismiss, appellant no longer has the right to amend his complaint as of course."). Haagensen attempted to file her Amended Complaint on March 27, 2009, long after the District Court granted the Motion to Dismiss on March 3, 2009.[7] After the entry of a

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[6] Rule 15(a) was amended effective December 1, 2009, after the relevant District Court orders and Haagensen's attempt to amend. The amended version of Rule 15(a)(1)(B) added language that terminated the right to amend once as a matter of course "21 days after the service of a motion under Rule 12(b)(e) or (f)."

[7] Haagensen argues that because the District Court's order did not include language declaring the case was

judgment dismissing a complaint, amendment may be sought only through Federal Rules of Civil Procedure 59(e) and 60(b). *Id.*

To the extent Haagensen contends that the District Court erred in dismissing her Complaint with prejudice and should have granted her

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closed or dismissed with prejudice, it did not constitute a final judgment. We reject this argument. A dismissal, "except one for lack of jurisdiction, improper venue, or failure to join a party under Rule 19" constitutes an "adjudication on the merits." Fed. R. Civ. P. 41(b); *see Alston v. Parker*, 363 F.3d 229, 232 (3d Cir. 2004). "The classic definition of a 'final decision' is one that 'ends the litigation on the merits and leaves nothing for the court to do but execute the judgment.'" *Morton Intern., Inc. v. A.E. Staley Mfg. Co.*, 460 F.3d 470, 476 (3d Cir. 2006) (citation omitted).

The order on appeal in *Fletcher-Harlee Corp.*, which we plainly considered to be a final judgment, included none of the language Haagensen finds necessary. It merely granted the Defendant's Rule 12(b)(6) motion. *See Fletcher-Harlee Corp. v. Pote* dismissing a complaint, amendment may be sought only through Federal Rules of Civil Procedure 59(e) and 60(b). *Id.*

Moreover, although the District Court's order granting the motion to dismiss did not explicitly state that dismissal was with prejudice, we note that the Defendants' motion expressly requested dismissal with prejudice. Haagensen, in seeking to amend, filed what the District Court deemed a "nearly identical Amended Complaint." (App. at 24.) The District Court amended its original order granting the Motion to Dismiss to clarify that the action was dismissed with prejudice. It then dismissed with prejudice as moot the Amended Complaint and the Motion for Emergency Temporary Restraining Order filed with it.

leave to amend, we find this contention unavailing. Our precedent states that a district court must allow a curative amendment when a complaint is vulnerable to Rule 12(b)(6) dismissal "unless an amendment would be inequitable or futile." *Phillips v. County of Allegheny*, 515 F.3d 224, 236 (3d. 2008); *see also Grayson v. Mayview State Hosp.*, 293 F.3d 103, 108 (3d Cir. 2002). Although the District Court failed to note the futility of Haagensen's proposed amendment, our own review of her legal claims and the substance of the proposed Amended Complaint confirms that an amendment would have been futile. Haagensen simply lacks a cognizable legal claim as no conflict exists between the federal and state regulations governing attorney conduct and discipline. This is not the sort of deficiency that could be cured by amendment. Moreover, the parties against whom Haagensen has filed suit are, as the Magistrate Judge's Report and Recommendation carefully delineated, covered by a range of immunity doctrines. The futility of *Concrete Contractors, Inc.*, 421 F.Supp.2d 831, 834-35 (D.N.J. 2006). Haagensen's sought-after amendment is evident and the District Court's denial of amendment was not error.

Haagensen's conduct before this Court and others concerns us. In addition to her suspension from the bar of the Commonwealth of Pennsylvania, she has received reciprocal discipline in the Western District of Pennsylvania. A separate case is pending before

the Third Circuit's Standing Committee on Attorney Discipline, *In Re: Janice Haagensen*, Civ. A. No. 10-8013.

Haagensen's manner of practicing law has been described as "vexatious," *Grine*, 214 F.R.D. at 369, and her conduct in pursuing this appeal amply evidences this. Following the panel's decision not to grant oral argument in this matter, she filed an "Emergency Motion to Restore her Right to Present Oral Argument." Haagensen contended that the Court violated Federal Rule of Appellate Procedure 34, which discusses when oral argument is proper. According to Haagensen, the Clerk of Court, in advising the parties that the case would be submitted on the briefs, "reli[ed] on hearsay and closed-door internal operating procedure to inform Appellant that her right to present oral argument has been terminated." (Appellant's Emergency Mot. ¶ 8.) Rule 34 does not state that a panel must place on record its reason for denying oral argument. Moreover, the rule specifically provides for the clerk to advise parties regarding whether oral argument will be scheduled. Haagensen provides no basis for her bold insinuation that the decision not to schedule oral argument was the product of nefarious back-room dealings, rather than the self-evident conclusion that her case did not merit argument.

We find no more persuasive Haagensen's contention, which relies on our order excusing the Appellees from filing a brief, that this "case

cannot be submitted, as stated in the Clerk's letter, 'on the briefs,' because only one brief (by Appellant) is before the Court." (*Id.* ¶ 9.) This argument moves an already frivolous case into the realm of the farcical.

The Court is also troubled by the inappropriate language used by Haagensen in addressing this Court and referring to members of this panel. In a Motion for Recusal of Judge Nygaard she alleged that Judge Nygaard "grossly corrupted the record" in a related case and that his "interest in protecting from objective inspection this corruption of the federal record disqualifies him as a judge on the merits panel contemplating Appellant's claims against state court judges." (Mot. for Recusal ¶ 6.) Such baseless allegations, directed at a single member of a panel and relying on the language of an unfavorable decision, are reflective of the undisciplined and unprofessional manner in which Haagensen appears to practice law. Haagensen's Petition for Rehearing in *Grine v. Colburn's Air Conditioning and Refrigeration, et al.*, Civ. A. No. 09-3775, provides further evidence of Haagensen's inappropriate ad hominem attacks. In that Petition, Haagensen contends that Judge Nygaard, the author of our decision in that case, chose to affirm the District Court's judgment "because he believes that federal judges are above the law, and ought to be able to write orders which are not subject to review." *Id.*, Appellant's Pet. for Rehearing, at 9. Finding normal typeface insufficient, Haagensen proceeds to charge Judge Nygaard

with "going outside the record, and off the reservation, WITH A VENGEANCE." (*Id.* at 12. (emphasis in original)).

For the foregoing reasons, we will affirm the District Court. We also refer Haagensen's behavior in this case to the Court's Standing Committee on Attorney Discipline, which is already considering whether to suspend her in this Court. *See* Rule 4.2, *Third Circuit Rules of Attorney Disciplinary Enforcement.*

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 09-1957

JANICE HAAGENSEN,

Appellant,

v.

SUPREME COURT OF PENNSYLVANIA and the following members of the Court, individually and in official capacities; Hon. RONALD D. CASTILLE, Chief Justice; Hon. THOMAS G. SAYLOR, Justice; Hon. J. MICHAEL EAKIN, Justice; Hon. MAX BAER, Justice; Hon. DEBRA TODD, Justice; Hon. SEAMUS P. MCCAFFERY, Justice; and Hon. JANE CUTLER GREENSPAN, Justice; DISCIPLINARY BOARD OF THE SUPREME COURT OF PENNSYLVANIA and the following personnel of the Disciplinary Board, individually and in official capacities; MATTHEW F. BURGER, Panel Chairman; LEONARD J. MARSICO, Panel Member; PHILIP B. HART, JR., Panel Member; PAUL J. KILLION, Chief Disciplinary Counsel; PAUL J. BURGOYNE, Deputy Chief Disciplinary Counsel; SAMUEL F. NAPOLI, Disciplinary Counsel and ELAINE BIXLER, Secretary

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On Appeal from the United States District Court
for the
Western District of Pennsylvania
(D.C. Civ. No. 08-01560)

District Judge: Terrence F. McVerry

Submitted Under Third Circuit L.A.R. 34.1(a)
on May 18, 2010

Before: FUENTES, HARDIMAN, and NYGAARD,
Circuit Judges

JUDGMENT

This cause came on to be heard on the record from the United States District Court for the Western District of Pennsylvania and was submitted pursuant to Third Circuit L.A.R. 34.1(a) on May 18, 2010. On consideration whereof, it is now hereby ORDERED and ADJUDGED that the Order of the District Court entered on March 27, 2009, be and the same is hereby AFFIRMED. All of the above in accordance with the opinion of this Court. Costs taxed against the Appellant.

ATTEST:

/s/ Marcia M. Waldron
Clerk

Dated: August 11, 2010

OFFICE OF THE CLERK

MARCIA M. WALDRON
CLERK

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

TELEPHONE 215-597-2995

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August 11, 2010

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Janice Haagensen, Esq.
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RE: Janice Haagensen v. Supreme Ct PA, et al Case Number: 09-1957
District Case Number: 2-08-cv-01560

ENTRY OF JUDGMENT

Today, **August 11, 2010** the Court entered its judgment in the above-captioned matter pursuant to Fed. R. App. P. 36. If you wish to seek review of the Court's decision, you may file a petition for rehearing. The procedures for filing a

petition for rehearing are set forth in Fed. R. App. P. 35 and 40, 3rd Cir. LAR 35 and 40, and summarized below.

Time for Filing:
14 days after entry of judgment.
45 days after entry of judgment in a civil case if the United States is a party.

Page Limits:
15 pages

Attachments:
A copy of the panel's opinion and judgment only. No other attachments are permitted without first obtaining leave from the Court.

Unless the petition specifies that the petition seeks only panel rehearing, the petition will be construed as requesting both panel and en banc rehearing. If separate petitions for panel rehearing and rehearing en banc are submitted, they will be treated as a single document and will be subject to a combined 15 page limit. If only panel rehearing is sought, the Court's rules do not provide for the subsequent filing of a petition for rehearing en banc in the event that the petition seeking only panel rehearing is denied.

A party who is entitled to costs pursuant to Fed.R.App.P. 39 must file an itemized and verified bill of costs within 14 days from the entry of judgment. The bill of costs must be submitted on the proper form which is available on the court's website.

A mandate will be issued at the appropriate time in accordance with the Fed.R.App.P. 41. Please consult the Rules of the Supreme Court of the United States regarding the timing and requirements for filing a petition for writ of certiorari.

Very truly yours,

Marcia M. Waldron

Marcia M. Waldron, Clerk

By: Phyllis A. Ruffin

Phyllis A. Ruffin , Case Manager
267-299-4918

APPENDIX 20-21

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 09-1957

JANICE HAAGENSEN,

Attorney,
Appellant

v.

SUPREME COURT OF PENNSYLVANIA and the following members of the Court, individually and in official capacities; Hon. RONALD D. CASTILLE, Chief Justice; Hon. THOMAS G. SAYLOR, Justice; Hon. J. MICHAEL EAKIN, Justice; Hon. MAX BAER, Justice; Hon. DEBRA TODD, Justice; Hon. SEAMUS P. MCCAFFERY, Justice; and Hon. JANE CUTLER GREENSPAN, Justice; DISCIPLINARY BOARD OF THE SUPREME COURT OF PENNSYLVANIA and the following personnel of the Disciplinary Board, individually and in official capacities; MATTHEW F. BURGER, Panel Chairman; LEONARD J. MARSICO, Panel Member; PHILIP B. HART, JR., Panel Member; PAUL J. KILLION, Chief Disciplinary Counsel; PAUL J. BURGOYNE, Deputy Chief Disciplinary Counsel; SAMUEL F. NAPOLI, Disciplinary Counsel and ELAINE BIXLER, Secretary

Appellees

SUR PETITION FOR REHEARING
EN BANC

Present: McKEE, Chief Judge, SLOVITER, SCIRICA, RENDELL, BARRY, AMBRO, FUENTES, SMITH, FISHER, CHAGARES, JORDAN, HARDIMAN, GREENAWAY, Jr., VANASKIE and [1]NYGAARD, Circuit Judges

The Petition for Rehearing filed by the Appellant in the above-entitled matter, having been submitted to the judges who participated in the decision of this court and to all the other available circuit judges of the circuit in regular active service, and no judge who concurred in the decision having asked for rehearing, and a majority of the circuit judges of the circuit in regular service not having voted for rehearing, the Petition for Rehearing by the panel and the Court en banc, is hereby DENIED.

BY THE COURT,
/s/ Julio M. Fuentes
Circuit Judge

DATED: October 13, 2010
par/cc: All Counsel

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[1] Judge Nygaard's vote is limited to panel rehearing only.

APPENDIX 22-28

BEFORE THE DISCIPLINARY BOARD OF THE SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL, :

Petitioner No. 170 DB 2006

v.

JANICE SHELBURNE HAAGENSEN,

Respondent Attorney Registration No. 49982

(Lawrence County)

PETITION FOR DISCIPLINE

Petitioner, Office of Disciplinary Counsel, by Paul J. Killion, Chief Disciplinary Counsel, and Samuel F. Napoli, Disciplinary Counsel, files the within Petition for Discipline, and charges Respondent Janice Shelburne Haagensen, Esquire with professional misconduct in violation of the Rules of Professional Conduct as follows:

1. Petitioner, whose principal office is located at Suite 1400, 200 North Third Street, Harrisburg, Pennsylvania 17101, is invested, pursuant to Rule 207 of the Pennsylvania Rules of Disciplinary Enforcement (hereafter "Pa.R.D.E."), with the power and the duty to investigate all matters involving alleged misconduct of an attorney admitted to practice law in the

Commonwealth of Pennsylvania and to prosecute all disciplinary proceedings brought in accordance with the various provisions of the aforesaid Rules.

2. Respondent, Janice Shelburne Haagensen, was born in 1946. She was admitted to practice law in the Commonwealth of Pennsylvania on November 16, 1987. Respondent's attorney registration mailing address is 349 New Road, Box 319, Enon Valley, PA 16120. Respondent is subject to the disciplinary jurisdiction of the Disciplinary Board of the Supreme Court of Pennsylvania.

CHARGE

3. At all times pertinent hereto, Respondent was counsel of record for Robert W. Grine, II, Joanne D. Grine, and the Estate of Margaret M. Grine, plaintiffs in a civil action captioned "Robert W. Grine, II, et al. v. William R. Coombs, et al.," filed in the United States District Court for the Western District of Pennsylvania, and docketed at No. 95- CV-342.

4. Throughout the litigation of the matter, which was filed by Respondent on December 21, 1995, and which concluded in 2004, Respondent engaged in a course of conduct of among other things:

(a) Refusing to comply with the Court's case management schedules;

(b) Failing to provide or request discovery and,

(c) Failing to respond on behalf of her clients to a Motion for Summary Judgment filed on behalf of the defendants, despite Orders of Court requiring her clients to so respond.

5. Respondent filed at least nine appeals to the Third Circuit in the case, all but one of which were denied in their entirety.

6. One of Respondent's appeals to the Third Circuit, filed at C.A. 98-3494, was denied in part for lack of jurisdiction, and in part modified the District Court's dismissal of aspects of the matter "with prejudice" to dismissal of those aspects "without prejudice."

7. In at least seven of the appeals, Respondent sought certiorari to the Supreme Court of the United States, and she did so on two occasions, concerning separate orders, in the final appeal.

8. Six of the appeals were denied for lack of jurisdiction, and certiorari was denied in each case in which it was sought.

9. The conduct engaged in by Respondent is more particularly described in the 73 page Opinion of the trial court filed on May 5, 2003.

10. On or about July 3, 2003, Respondent filed in the United States Court of Appeals for the Third Circuit all appeal of the May 5, 2003 Order

which accompanied the Opinion of the trial court filed On that same day.

11. On May 28, 2004, the United States Court of Appeals for the Third Circuit affirmed the judgment of the District Court.

12. In a footnote, the Third Circuit stated:

> Federal Rule of Appellate Procedure 38 provides a remedy of damages for a party who is required to defend a legitimate judgment from a frivolous appeal. We will leave it to the appellees to determine whether they wish to petition for such an award.

13. On or about December 17, 2004, the appellees filed with the United States Court of Appeals for the Third Circuit a motion for attorney's fees to be paid by the plaintiffs/appellants and/or Respondent.

14. On October 21, 2004, the Court of Appeals granted the appellees' motion for attorney's fees, and ordered Respondent to pay a total of $44',936.13 in damages to various parties, pursuant to F.R.A.P. 38.

15. All but the last of Respondent's appeals in this case were so patently premature that they were frivolous.

16. With regard to the denial of the final appeal, Respondent sought an *en banc* rehearing by the Third Circuit, and also filed a Petition for Writ of Certiorari with the Uriited States Supreme Court, boA of which were denied.

17. Respondent's vexatious conduct in the federal civil litigation caused undue delay in those proceedings and caused the diversion of time and resources from other business of the Court.

5

18. By her conduct as alleged in Paragraphs 3 through 17 above, Respondent violated the following Rules of Professional Conduct:

(a) Rule of Professional Conduct 3.1 A lawyer shall not bring or defend a proceeding,-or assert or controvert an issue therein, unless there is a basis, in law and fact for doing so that is not frivolous, which includes a good faith argument for an extension, modification or reversal of existing law. A lawyer for the defendant in a criminal proceeding, or the respondent in a proceeding that could result in incarceration, may nevertheless so defend' the proceeding as to require that every element of the case be established,

(b) Rule of Professional Conduct 8.4(d) - It is professional misconduct for a lawyer to engage in conduct that is prejudicial to the administration of justice.

WHEREFORE, Petitioner prays that your Honorable Board appoint, pursuant to Rule 205, Pa.R.D.E., a Hearing Committee to hear testimony and receive evidence in support of the foregoing charge(s) and upon completion of said hearing to make such findings of fact, conclusions of law, and recommendations for disciplinary action as it may deem appropriate.

Respectfully submitted,

OFFICE OF DISCIPLINARY COUNSEL

PAUL J. KILLION
CHIEF DISCIPLINARY COUNSEL

Samuel F. Napoli Disciplinary Counsel
Attorney Registration No. 35303 The Disciplinary Board of the
Supreme Court of Pennsylvania Suite 1300, Frick Building
437 Grant Street
Pittsburgh, PA 15219
Telephone: (412) 565-3173

By

BEFORE THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL, :

Petitioner No. 170 DB 2006

v.

JANICE SHELBURNE HAAGENSEN,

Respondent Attorney Reg.
No. 49982

(Lawrence County)

VERIFICATION

The statements contained in the foregoing Petition for Discipline are true and correct to the best of my knowledge or information and belief and are made subject to the penalties of 18 Pa.C.S. §4904, relating to unsworn falsification to authorities.

Samuel F. Napoli
Disciplinary Counsel

Date November 8, 2006.

Supreme Court, U.S.
FILED

101392 JAN 7- 2011

OFFICE OF THE CLERK

No.

IN THE

Supreme Court of the United States

JANICE HAAGENSEN,
Petitioner

v.

SUPREME COURT OF PENNSYLVANIA, ET AL
Respondents

On Petition for a Writ of Certiorari to the
United States Court of Appeals for the Third Circuit

SUPPLEMENTAL APPENDIX

JANICE HAAGENSEN
Petitioner, pro se
349 NEW ROAD
ENON VALLEY, PA 16120
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TEL 724 336-5962

May 5, 2011, Thursday

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IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF Pennsylvania

JANICE S. HAAGENSEN, Plaintiff, vs SUPREME COURT OF PENNSYLVANIA et al., Defendants	) Civil Action No. 08-1560) Judge McVerry) Magistrate Judge Mitchell

REPORT AND RECOMMENDATION

I. Recommendation

It is respectfully recommended that the motion to dismiss submitted on behalf of Defendants (Docket No. 5) be granted. It is further recommended that the motion for emergency temporary restraining order submitted on behalf of Plaintiff (Docket No. 2) be dismissed as moot.

II. Report

Plaintiff, Janice S. Haagensen, proceeding pro se, [1] brings this action pursuant to 42 U.S.C. § 1983 against Defendants, the Supreme Court of Pennsylvania, the seven justices of that court (Ronald D. Castille, Thomas G. Saylor, J. Michael Eakin, Max Baer, Debra Todd, Seamus P.

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[1] Although she is proceeding pro se in this matter, Plaintiff is in fact an attorney and has filed several cases before this Court on behalf of clients, in addition to the two pending cases in which she is also the plaintiff. See Stacey v. City of Hermitage, No. 02-1911; Ferguson v. Haney, No. 98-1223.

McCaffery, Jane Cutler Greenspan), the Disciplinary Board of the Supreme Court of Pennsylvania, hearing panel members Matthew F. Burger, Leonard J. Marsico and Philip B. Hart, Jr., Chief Counsel Paul J. Killion, Deputy Chief Counsel Paul J. Burgoyne, Counsel Samuel F. Napoli and Secretary Elaine Bixler. Plaintiff alleges that the Disciplinary Defendants (Burger, Marsico, Hart, Killion, Burgoyne, Napoli and Bixler) improperly investigated and held that she violated the Pennsylvania Rules of Professional Conduct based on conduct that occurred in a case before this Court. After the Board's decision, she petitioned the Pennsylvania Supreme Court for review and raised her objection to the state exercising jurisdiction over alleged attorney misconduct in a federal forum. The Judicial Defendants (the Pennsylvania Supreme Court and its seven justices) reviewed the decision of the Disciplinary Board and issued an order referring the matter to the Board for the imposition of discipline on September 25, 2008. Defendant Bixler, as Secretary of the Board, sent Plaintiff a letter reflecting the Board's decision that she be required to pay the expenses of investigation and prosecution of the disciplinary matter and that, if she fails to do so, she may be transferred to inactive status.

Plaintiff seeks declaratory relief against all Defendants. She asks for a preliminary and permanent injunction "enjoining Defendants ... from enforcing the Pennsylvania Supreme Court Order of September 25, 2008, imposing sanctions upon Plaintiff-respondent, in the form of imposition of future private reprimand, and purporting to demand payment of costs, or cause and effect the Plaintiff's

transfer to inactive status, thus destroying her property interest in employment." (Compl. at 24.) She also requests compensatory and punitive damages, attorney fees, costs and interest. (Compl. at 24-25.)

Presently before this Court for disposition is a motion to dismiss, submitted on behalf of all Defendants. For the reasons that follow, the motion should be granted.

Facts

Plaintiff, who is an attorney licensed to practice in the Commonwealth of Pennsylvania by the Pennsylvania Supreme Court and who is admitted to practice in this Court, the United States District Court for the Eastern District of Pennsylvania and the United States Supreme Court, filed an action entitled Grine v. Coombs, No. 95-342E, on December 21, 1995. Her clients, Margaret M. Grine, JoAnne Grine and Robert Grine, were bringing suit under the Resource Conservation and Recovery Act, 42 U.S.C. § 6901, the Federal Water Pollution Control Act, 33 U.S.C. § 1251, and the Comprehensive Environmental Response, Compensation and Liabilities Act, 42 U.S.C. § 9601. They also brought suit against the Environmental Protection Agency and its Region III Director under the Freedom of Information Act, 5 U.S.C. § 552. (Compl. ¶¶ 15-16.)

Plaintiff indicates that the district judge wrote his last order on May 5, 2003 and that the Court of Appeals for the Third Circuit affirmed the judgment of the court (dismissing the case) on May 28, 2004. (Compl. ¶¶ 17-18.) What she does not indicate–but

the Court can take notice of as matters of public record–are the following facts: 1) the district court dismissed the case with prejudice for her failure to prosecute by, inter alia, engaging in dilatory conduct for seven years and refusing to comply with case management orders and the court issued a lengthy opinion explaining the reasons for its action, see Grine v. Coombs, 214 F.R.D. 312 (W.D. Pa. 2003), aff'd mem., 98 Fed. Appx. 178 (3d Cir. 2004); and 2) the defendants subsequently requested damages pursuant to Rule 38 of the Federal Rules of Appellate Procedure and the Court of Appeals entered an order granting this request based on her filing of frivolous appeals and specifically directed Attorney Haagensen to pay these costs, Grine v. Coombs, 112 Fed. Appx. 830 (3d Cir. 2004).

She was served by the Office of Disciplinary Counsel with a Petition for Discipline filed on November 15, 2006, concerning her conduct during the Grine case and accusing her of violating Rules of Professional Conduct 3.1 and 8.4(d). The Hearing Committee found that Disciplinary Counsel proved that Plaintiff violated specific Rules of Professional Conduct after the committee performed an "exhaustive review" of the Grine litigation. Plaintiff filed her answer to the petition for discipline on December 14, 2006. (Compl. ¶¶ 19-20.)

On May 30, 2007, a hearing was held by the members of the Hearing Committee. On October 30, 2007, the Committee issued an order finding Plaintiff guilty of violation of Rules of Professional Conduct 3.1 and 8.4(d). A Dispositional Hearing was conducted on December 18, 2007. (Compl. ¶¶ 21-23.)

A Report of the Hearing Committee was submitted to the Disciplinary Board of the Pennsylvania Supreme Court on February 28, 2008, recommending that Plaintiff be made subject to private reprimand by the Board. On May 22, 2008, the Board ordered that Plaintiff be subjected to private reprimand by the Disciplinary Board of the Supreme Court of Pennsylvania. (Compl. ¶¶ 22-24.)

Plaintiff filed a Notice of Appeal to the Pennsylvania Supreme Court on June 6, 2008, requesting de novo review of the decision of the Disciplinary Board. In her appeal, she raised an objection to the exercise of jurisdiction by a state court in conflict with federal law. She filed a petition for review of the Disciplinary Board's order of May 22, 2008, taxing costs and expenses, on the ground that the Board lacked original or appellate jurisdiction to enforce sanctions arising out of Plaintiff's practice of law in the United States District Court for the Western District of Pennsylvania. (Compl. ¶¶ 25-26.)

Plaintiff alleges that, in its Answer to her Petition for Review, Chief Disciplinary Counsel admitted to knowledge of the fact that no federal attorney disciplinary proceeding as initiated or prosecuted by the federal judiciary ever took place or was raised concerning her practice of law in a federal forum. He further stated his belief that this Court's review of the matter or lack thereof was irrelevant to the exercise of the state court's jurisdiction. On September 25, 2008, the Pennsylvania Supreme Court issued an order, referring the matter to the Disciplinary Board for imposition of a private reprimand pursuant to Rule 204(a)(5) of the

Pennsylvania Rules of Disciplinary Enforcement. On October 10, 2008, a letter signed by Elaine M. Bixler enclosed a Revised Notice of Taxation of Expenses in the amount of $1,499.00 and asserted that failure to pay these expenses in thirty day would be deemed a request for transfer to inactive status, i.e., "will result in action being taken by the Board pursuant to § 93.112 of the Disciplinary Rules for the entry of an order transferring [Plaintiff] to inactive status." (Compl. ¶¶ 27-29.)

Procedural History

Plaintiff filed this action on November 10, 2008. Count I alleges that the Defendants' attempts to sanction her in a state court for alleged misconduct arising out of litigation that occurred in a federal court violated her First Amendment rights of free speech and access to the courts, as well as her Fourteenth Amendment right of due process. Count II alleges that Defendants have deprived her of her property interest in employment and violated her right to procedural due process. Count III alleges that she was subjected to an unreasonable search and seizure in violation of her rights under the Fourth Amendment. Count IV alleges that Defendants' actions violated her constitutional right to privacy, as guaranteed by the Fourteenth Amendment. Finally, Count V alleges that Defendants have violated the Supremacy Clause of the Constitution through their reliance on state law that was in conflict with the laws of the United States and in so doing they violated her right to substantive due process. On November 12, 2008, Plaintiff filed a motion for an emergency temporary restraining order.

On November 19, 2008, a motion to dismiss was filed by Defendants. They argue that: 1) the Pennsylvania Supreme Court and the Disciplinary Board as well as the individual members of these entities in their official capacities are entitled to immunity under the Eleventh Amendment; 2) state agencies and agents in the official capacities are not "persons" for purposes of § 1983; 3) all of Plaintiff's claims are barred by the Rooker-Feldman doctrine, in that they seek review of a final decision of the Pennsylvania Supreme Court and review lies in the United States Supreme Court; 4) Plaintiff's claims against the Judicial Defendants in their individual capacities is barred by the doctrine of absolute judicial immunity; 5) her claims against the individual members of the Disciplinary Board are barred by the doctrine of quasi-judicial immunity; 6) her claims against Killion, Burgoyne and Napoli are barred by the doctrine of prosecutorial immunity; 7) her individual capacity claims are barred by the doctrine of qualified immunity as to all Defendants; 8) her request for injunctive relief against the Judicial Defendants is barred by the terms of §1983, as amended by the Federal Courts Improvement Act of 1996; 9) her contention that state courts lack jurisdiction to discipline attorneys for actions that occur in federal court has been rejected by a number of courts and the case she cites is inapposite; and 10) even if she prevailed in this case, she could not obtain attorney fees because she is representing herself. [2]

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[2] The Court need not reach many of these arguments.

Standard of Review

A Rule 12(b)(6) motion to dismiss for failure to state a claim upon which relief could be granted must be viewed in the light most favorable to plaintiff and all well-pleaded allegations of the complaint must be accepted as true. Neitzke v. Williams, 490 U.S. 319 (1989); Estelle v. Gamble, 429 U.S. 97 (1976). The motion cannot be granted unless the court is satisfied "that no relief could be granted under any set of facts that could be proved consistent with the allegations." Hishon v. King & Spalding, 467 U.S. 69, 73 (1984). See also National Org. for Women, Inc. v. Scheidler, 510 U.S. 249 (1994). The issue is not whether the plaintiff will prevail at the end but only whether he should be entitled to offer evidence to support his claim. Williams, 490 U.S. at 323; Scheuer v. Rhodes, 416 U.S. 232, 236 (1974). The Court of Appeals has stated that:

> To decide a motion to dismiss, courts generally consider only the allegations contained in the complaint, exhibits attached to the complaint and matters of public record.... [In addition,] a court may consider an undisputedly authentic document that a defendant attaches as an exhibit to a motion to dismiss if the plaintiff's claims are based on the document.

Pension Benefit Guaranty Corp. v. White Consolidated Indus., 998 F.2d 1192, 1196 (3d Cir. 1993) (citations omitted); see also Southern Cross Overseas Agencies, Inc. v. Wah Kwong Shipping

Group, Ltd., 181 F.3d 410, 426 (3d Cir. 1999) ("a court may properly look at public records, including judicial proceedings"). Thus, the Court may cite to the record in the case of Grine v. Coombs, which is a matter of public record and is cited in the complaint, without converting the motion into a motion for summary judgment.

Section 1983 Claims

It is provided in 42 U.S.C. § 1983 that:

> Every person who, under color of any statute, ordinance, regulation, custom, or usage of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or any other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress....

The Supreme Court has held that § 1983 "is not itself a source of substantive rights, but a method for vindicating federal rights elsewhere conferred by those parts of the United States Constitution and federal statutes that it describes." Baker v. McCollan, 443 U.S. 137, 144 n.3 (1979). In this case, the Court need not identify the rights at issue, because under any reading of the complaint, Plaintiff has failed to state a claim upon which relief could be granted.

Plaintiff points out that federal courts have authority to prescribe rules for the conduct of attorneys. This is true. See 28 U.S.C. §§ 1654, 2071(a); Fed.R.Civ.P. 83. Moreover, it is well established that "a federal court has the power to control admission to its bar and to discipline attorneys who appear before it." Chambers v. NASCO, Inc., 501 U.S. 32, 43 (1991). She also notes that this Court has adopted Rules of Disciplinary Enforcement for Attorneys which include procedures such as initiation of the matter by the Chief Judge, referral of the matter to counsel for investigation and the prosecution of formal charges, ordering the respondent-attorney to show cause why discipline should not be imposed and so on. See W.D.PA.LR. 83.3.

However, the fact that these provisions exist does not support the proposition Plaintiff advances here, namely that the Supreme Court of Pennsylvania acted "without jurisdiction" when it sanctioned her for conduct that occurred in federal court. Plaintiff cites no authority in support of this conclusion and there is ample authority explicitly rejecting it. See Gadda v. Ashcroft, 377 F.3d 934 (9th Cir. 2004) (immigration attorney whose practice was solely in federal court could be disciplined for misconduct by the Supreme Court of California); In re Dennis, 188 P.3d 1, 13- 14 (Kan. 2008) (Kansas Supreme Court could sanction attorney for conduct that occurred in Kansas federal court); Gillette v. Edison, 2009 WL 81919 (D.N.D. Jan. 14, 2009) (North Dakota Supreme Court could sanction attorney for conduct that occurred in a tribal proceeding); Woloohojian Realty Copr. v. Bogosian, 2008 WL 4646109, at *1 (D.R.I. Oct. 17, 2008) (Massachusetts Board of Bar

Overseers could discipline attorney for conduct that occurred in a federal court in Rhode Island); In re Soininen, 783 A.2d 619, 622 (D.C. 2001) (disciplining member of DC bar for acts committed in Virginia); Mississippi Bar v. Strauss, 601 So.2d 840, 845 (Miss. 1992) (imposing three-month suspension from practice in Mississippi because of conduct in federal court in Louisiana); Foster v. McConnell, 329 P.2d 32 (Cal. App. 1958) (noting cases where attorneys have been disciplined for acts outside the jurisdictions).

Plaintiff cites Surrick v. Killion, 449 F.3d 520 (3d Cir. 2006). In that case, the Court of Appeals held that an attorney (Surrick) who remained suspended from practice in Pennsylvania state courts but who had been reinstated to practice before the United States District Court for the Eastern District of Pennsylvania, following expiration of a reciprocal suspension, could open a law office in the state for the sole purpose of conducting federal practice. In so doing, the court held that the state's prohibition against Surrick opening this office, which was based on the Pennsylvania Supreme Court's holding in the nearly identical case of Office of Disciplinary Counsel v. Marcone, 855 A.2d 654 (Pa. 2004), was preempted by the district court's power to control admission to its bar. Specifically, the court stated that:

> it is well established that "a federal court has the power to control admission to its bar and to discipline attorneys who appear before it." Chambers v. NASCO, Inc., 501 U.S. 32, 43, 111 S.Ct. 2123, 115 L.Ed.2d 27 (1991); In re Poole, 222 F.3d 618, 620

(9th Cir.2000) ("[A]s nearly a century of Supreme Court precedent makes clear, practice before federal courts is not governed by state court rules."). This power is rooted in both statute, see 28 U.S.C. § 2071(a) ("The Supreme Court and all courts established by Act of Congress may from time to time prescribe rules for the conduct of their business."); 28 U.S.C. § 1654 ("In all courts of the United States the parties may plead and conduct their own cases personally or by counsel, as, by the rules of such courts, respectively, are permitted to manage and conduct causes therein."); Rule 83, Federal Rules of Civil Procedure, and the inherent authority of the federal courts, Chambers, 501 U.S. at 43, 111 S.Ct. 2123 (using federal courts' control over admission to their bars as an example of an inherent power "governed not by rule or statute but by the control necessarily vested in courts to manage their own affairs so as to achieve the orderly and expeditious disposition of cases") (citation and quotation omitted). Pursuant to its exclusive authority over members of its bar, Poole, 222 F.3d at 621, the Eastern District of Pennsylvania promulgated Rule 83.6 VII(I) of the Eastern District Rules of Civil Procedure, which expressly permits attorneys suspended from a state bar to practice before the Eastern District of Pennsylvania. It is therefore beyond dispute-and the Office of Disciplinary Counsel does not question this point-that

> the Commonwealth lacks the authority to prohibit Surrick from practicing law before the Eastern District of Pennsylvania. See In re Desilets, 291 F.3d [925,] 929 [(6th Cir. 2002)] (observing that although the enabling Congressional statute in Sperry expressly authorized federal authorities to determine who may practice law and 28 U.S.C. §§ 1654 & 2071 do not, this is a "distinction without a difference"); cf. United States v. Hvass, 355 U.S. 570, 575, 78 S.Ct. 501, 2 L.Ed.2d 496 (1958) (holding that rules and regulations promulgated by a district court that have been lawfully authorized and have a clear legislative base qualify as "a law of the United States," as that phrase is used in a perjury statute).

Id. at 531-32. The court noted that "the question here is not whether any federal law expressly confers the right to maintain an office, but whether the maintenance of an office is 'reasonably within the scope' of the federally-conferred license to practice law.'" Id. at 533 (quoting Sperry v. State of Florida, 373 U.S. 379, 402 n.47 (1963)). [3] The court concluded that maintenance of an office was incident to the federally-conferred license to practice law, and that

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[3] In Sperry, the Supreme Court held that the State of Florida could not enjoin a local patent practitioner, who was not admitted to the State Bar of Florida, from preparing patent applications and other legal instruments that were filed solely in the United States Patent and Trademark Office. The court in Surrick explained that Sperry "stands for the general proposition that where federal law authorizes an agent to practice before a federal tribunal, the federal law preempts a state's licensing requirements to the extent that those requirements hinder or obstruct the goals of federal law." 449 F.3d at 530.

the federal power preempted the Pennsylvania law barring an unlicensed attorney from maintaining a law office.

In concluding, the court observed that its holding was in conflict with that of the Pennsylvania Supreme Court. It then pointed to "three jurisprudential considerations present here that demonstrate a felicity of respect to the Pennsylvania Supreme Court." First, the court's decision did not overrule Marcone; only the United States Supreme Court could do that. Second, the decisions of the Pennsylvania Supreme Court did not bind the Court of Appeals and similarly the Pennsylvania Supreme Court was not bound by the Court of Appeals' decisions, even on questions of federal law:

> Although consistency between state and federal courts is desirable in that it promotes respect for the law and prevents litigants from forum-shopping, there is nothing inherently offensive about two sovereigns reaching different legal conclusions. Indeed, such results were contemplated by our federal system, and neither sovereign is required to, nor expected to, yield to the other.

Id. at 535. Finally,

> recent action by the Eastern District of Pennsylvania eliminates the possibility that this will be a recurring problem. While this case was pending, the Eastern District of Pennsylvania adopted Local Rule 83.6 VII(C), which requires federal

> reinstatement to be held in abeyance until reinstatement to state practice has been decided.

Id. Thus, the specific situation presented in Surrick is unlikely to occur again.

Surrick is distinguishable from this case in numerous significant respects. First, the Court of Appeals did not hold that the Disciplinary Board or the Pennsylvania Supreme Court would lack jurisdiction to determine where or when Surrick could practice law. Rather, the court held only that if those authorities followed the Pennsylvania Supreme Court's decision in Marcone and precluded Surrick from opening an office to practice only in federal court, they would be in conflict with federal law and that as a result, federal law would take precedence. Second, the court's decision was based upon the existence of an actual conflict between state and federal law: "Absent conflicting federal law, the Commonwealth of Pennsylvania would be free to prohibit suspended attorneys from maintaining offices for the sole purpose of practicing before the federal courts." Id. at 534 n.6 (citing Sperry, 373 U.S. at 383).

The critical difference between Surrick and Sperry on the one hand and the instant case on the other is that Plaintiff has identified no conflict between the federal and state regulations. Moreover, she has not alleged that the Pennsylvania Supreme Court has suspended her from practicing in federal court. Indeed, she has not even alleged that she has been suspended from the practice of law in Pennsylvania state courts, only that she has been

directed to pay the costs of investigation and prosecution of the disciplinary matter and that if she fails to do she may be transferred to inactive status. Rather, she points only to the existence of local rules that authorize–but do not require–disciplinary action to be taken against her for conduct committed in this Court.

Plaintiff has not even suggested the existence of a conflict between the manner in which disciplinary action would be handled differently by the Supreme Court of Pennsylvania and this Court's rules. In fact, the Local Rules of this Court (to which Plaintiff points) specifically provide that the "rules of professional conduct adopted by the court are the rules of professional conduct adopted by the Supreme Court of Pennsylvania, as amended from time to time by the state court ... and as otherwise provided by specific order of this court." W.D.PA.LR. 83.3.1(B). Moreover, the rules do not require that disciplinary proceedings be initiated in this Court before the state takes action, which is what Plaintiff implies that they say.

Therefore, this case fails to state a claim upon which relief could be granted. In addition, even assuming that the case stated a claim, all of the Defendants would have to be dismissed pursuant to various immunity doctrines, discussed briefly below.

Eleventh Amendment Immunity

The Eleventh Amendment provides:

> The judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted

> against one of the United States by Citizens of another State, or by Citizens or Subjects of any Foreign State.

U.S. Const. amend. XI. The Supreme Court has stated that the presupposition confirmed by the Eleventh Amendment is that "federal jurisdiction over suits against unconsenting states was not contemplated by the Constitution when establishing the judicial power of the United States." Seminole Tribe of Florida v. Florida, 517 U.S. 44, 54 (1996) (internal citation omitted). The immunity applies not only to the state itself, but also to state agents and state instrumentalities. Thus, courts must examine the essential nature and effect of the proceeding, the nature of the entity created by state law or the issue of whether a money judgment against the instrumentality would be enforceable against the state to determine whether the instrumentality should be treated "as an arm of the state." Regents of the University of Calif. v. Doe, 519 U.S. 425, 429-30 (1997).

The Pennsylvania Supreme Court is a court entity of the Unified Judicial System of Pennsylvania and as such it is an arm of the state for Eleventh Amendment immunity purposes. See Callahan v. City of Philadelphia, 207 F.3d 668, 672 (3d Cir. 2000). The Disciplinary Board is an agency of the Unified Judicial System and is also an arm of the state for Eleventh Amendment immunity purposes. Mattas v. Supreme Court of Pa., 576 F. Supp. 1178, 1182 (W.D. Pa. 1983), cited in Callahan, 207 F.3d at 674. In addition, the individual defendants in their official capacities, are state agents who would be

entitled to Eleventh Amendment immunity. Kentucky v. Graham, 473 U.S. 159, 166 (1985).

The Court of Appeals for the Third Circuit has indicated that:

> Eleventh Amendment immunity is, however, subject to three primary exceptions: (1) congressional abrogation, (2) waiver by the state, and (3) suits against individual state officers for prospective injunctive and declaratory relief to end an ongoing violation of federal law. The third exception ... is the doctrine of Ex parte Young, 209 U.S. 123, 28 S.Ct. 441, 52 L.Ed.714 (1908).

Pennsylvania Federation of Sportsmen's Clubs, Inc. v. Hess, 297 F.3d 310, 323 (3d Cir. 2002) (citation omitted). Pennsylvania has not consented to waive its Eleventh Amendment immunity to being sued in federal court. 42 Pa. C.S. § 8521(b); Chittister v. Department of Cmty. & Econ. Dev., 226 F.3d 223, 227 (3d Cir. 2000). In addition, the Supreme Courts has held that § 1983 does not abrogate states' sovereign immunity. Quern v. Jordan, 440 U.S. 332, 339-46 (1979).

With respect to the third exception, the Court of Appeals has explained that:

> The theory behind Young is that a suit to halt the enforcement of a state law in conflict with the federal constitution is an action against the individual officer charged with that enforcement and ceases to be an action against the state to which sovereign

> immunity extends; the officer is stripped of his official or representative character and becomes subject to the consequences of his individual conduct. The relief sought must be prospective, declaratory, or injunctive relief governing an officer's future conduct and cannot be retrospective, such as money damages.

MCI Telecommunication Corp. v. Bell Atlantic-Pa., 271 F.3d 491, 506 (3d Cir. 2001) (citations omitted).

"In determining whether the doctrine of Ex parte Young avoids an Eleventh Amendment bar to suit, a court need only conduct a straightforward inquiry into whether [the] complaint alleges an ongoing violation of federal law and seeks relief properly characterized as prospective." Verizon Md., Inc. v. Public Service Comm'n of Md., 535 U.S. 635, 645 (2002) (citation omitted). Plaintiff has not alleged an ongoing violation of federal law. Rather, she seeks to have an order entered that would establish that the Pennsylvania Supreme Court and its Disciplinary Board acted without jurisdiction when they sanctioned her for conduct that occurred during the Grine case in federal court. Therefore, the Eleventh Amendment applies to foreclose suit against the Pennsylvania Supreme Court, the Disciplinary Board and the individuals comprising these entities acting in their official capacities.

Absolute Judicial Immunity

The Judicial Defendants argue that they are immune from any damages claims based on the doctrine of absolute judicial immunity. A judge is

immune from liability for all actions taken within a judicial capacity. Mireles v. Waco, 502 U.S. 9 (1991); Forrester v. White, 484 U.S. 219, 225-27 (1988); Stump v. Sparkman, 435 U.S. 349 (1978). Further, a "judge will not be deprived of immunity because the action he took was in error, was done maliciously, or was in excess of his authority; rather, he will be subject to liability only when he has acted in the 'clear absence of all jurisdiction.'" Stump, 435 U.S. at 356-57 (quoting Bradley v. Fisher, 13 Wall. 335, 351 (1872)). The Court observed that:

> In Bradley, the Court illustrated the distinction between lack of jurisdiction and excess of jurisdiction with the following examples: if a probate judge, with jurisdiction over only wills and estates, should try a criminal case, he would be acting in the clear absence of jurisdiction and would not be immune from liability for his action; on the other hand, if a judge of a criminal court should convict a defendant of a nonexistent crime, he would merely be acting in excess of his jurisdiction and would be immune.

Id. at 357 n.7 (quoting Bradley, 13 Wall. at 352).

The Supreme Court of Pennsylvania has and exercises "the powers vested in it by the Constitution of Pennsylvania." 42 Pa. C.S. § 502. Under the Constitution of Pennsylvania, the Supreme Court is given the power to regulate the practice of law. Pa. Const. Art. V § 10(c). Furthermore, the Supreme Court reviews the findings and recommendations of the Disciplinary Board. Pa.R.D.E. 208(e). Thus, the

Supreme Court has subject matter jurisdiction over attorney disciplinary proceedings.

Plaintiff's allegations involve judicial actions by the Justices of the Pennsylvania Supreme Court, who were acting within their authority to regulate the practice of law in Pennsylvania. Therefore, the Justices in their individual capacities were acting within their jurisdiction and are immune from Plaintiff's suit for damages.

Quasi-Judicial Immunity

The Supreme Court "has extended absolute immunity to certain others who perform functions closely associated with the judicial process." Cleavinger v. Samaar, 474 U.S. 193, 200 (1985). The Court has also recognized that "disciplinary proceeding is judicial in nature," Middlesex County Ethics Committee v. Garden State Bar Ass'n, 457 U.S. 423, 433 (1982). Thus, quasi-judicial immunity bar claims against state bar disciplinary members. See Klapper v. Guria, 582 N.Y.S.2d 892, 895 (1992); Sassower v. Mangano, 927 F. Supp. 113, 120-21 (S.D.N.Y. 1996). Furthermore, personnel who act on behalf of a judicial official are also entitled to quasi-judicial immunity for these acts. Gallas v. Supreme Court, 211 F.3d 760, 772-73 (3d Cir. 2000). Thus, the Disciplinary Board Members (Burger, Marsico and Hart) who issued a report and sat as a hearing committee for the Board, are entitled to quasi-judicial immunity and Plaintiff's suit against them cannot proceed.

Absolute Prosecutorial Immunity

The Supreme Court has held that "a state prosecuting attorney who acted within the scope of his duties in initiating and pursuing a criminal prosecution" is entitled to absolute immunity to suit under § 1983. Imbler v. Pachtman, 424 U.S. 409, 410 (1976). As the Court explained more recently:

> Liberally construed, Imbler's complaint included not only a charge that the prosecution had been wrongfully commenced, but also a charge that false testimony had been offered as well as a charge that exculpatory evidence had been suppressed. His constitutional claims were thus broader than any specific common-law antecedent. Nevertheless, relying on common-law decisions providing prosecutors with absolute immunity from tort actions based on claims that the decision to prosecute was malicious and unsupported by probable cause, as well as from actions for defamation based on statements made during trial, we concluded that the statute should be construed to provide an analogous defense against the claims asserted by Imbler. The policy considerations that justified the common-law decisions affording absolute immunity to prosecutors when performing traditional functions applied equally to statutory claims based on the conduct of the same functions.

Kalina v. Fletcher, 522 U.S. 118, 124-25 (1997) (footnotes omitted).

Plaintiff's allegations against Killion, Burgoyne and Napoli arise out of their actions as prosecutors for the state before the Disciplinary Board; thus they are no different from those alleged in Imbler. Absolute immunity for prosecutors is a defense to an individual capacity suit. Kentucky v. Graham, 473 U.S. 159, 166-67 (1985). Therefore, Defendants Killion, Burgoyne and Napoli are entitled to absolute prosecutorial immunity from actions they took in the disciplinary proceedings and her claims against them should be dismissed.

Because Defendants' motion to dismiss should be granted, Plaintiff's motion for emergency temporary restraining order should be dismissed as moot.

For these reasons, it is recommended that the motion to dismiss submitted on behalf of defendants (Docket No. 5) be granted. It is further recommended that the motion for emergency temporary restraining order submitted on behalf of Plaintiff (Docket No. 2) be dismissed as moot.

Within thirteen (13) days of being served with a copy, any party may serve and file written objections to this Report and Recommendation. Any party opposing the objections shall have seven (7) days from the date of service of objections to respond thereto.

Failure to file timely objections may constitute a waiver of any appellate rights.

Respectfully submitted,

s/ Robert C. Mitchell
ROBERT C. MITCHELL
United States Magistrate Judge

Dated: January 27, 2009

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF
PENNSYLVANIA

JANICE HAAGENSEN,)
Plaintiff,)
)
vs.) Civil Action No. 08-
1560
)
SUPREME COURT OF)
PENNSYLVANIA, et al.,)
Defendants.)

ORDER

AND NOW, this 3rd day of March, 2009, after the plaintiff, Janice Haagensen, filed the above-captioned action with a motion for emergency temporary restraining order submitted on behalf of Plaintiff, followed by a motion to dismiss submitted on behalf of all defendants, and after a Report and Recommendation was filed by the United States Magistrate Judge granting the parties thirteen days after being served with a copy to file written objections thereto, and upon consideration of the objections filed by the plaintiff which are found to be without merit, and upon independent review of the motion and the overall record including consideration of the Magistrate Judge's Report and Recommendation (Docket No. 14), which is adopted as the opinion of this Court,

IT IS ORDERED that defendants' Motion to Dismiss (Docket No. 5) is GRANTED.

IT IS FURTHER ORDERED that plaintiff's Motion for Emergency Temporary Restraining Order (Docket No. 2) is **DISMISSED** as moot.

s/ Terrence F. McVerry
United States District
Judge